

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LORY FABIAN	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No: 4:12-cv-01112-JAR
	)	
THE ST. LOUIS RAMS PARTNERSHIP,	)	
et al.	)	
Defendant.	)	

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO**  
**DEFENDANTS’ MOTION IN LIMINE REGARDING COMMENT AND**  
**EVIDENCE RELATING TO DENIAL OF UNEMPLOYMENT BENEFITS AND**  
**NON-PAYMENT OF OVERTIME**  
**AND MEMORANDUM IN SUPPORT THEREOF**

(This memorandum responds to Doc. #88)

COMES NOW Plaintiff, through counsel, and for her Memorandum in Opposition to Defendants’ Motion in Limine Regarding Comment and Evidence Relating to Denial of Unemployment Benefits and Non-Payment of Overtime, states as follows:

Unemployment Benefits. In their motion, Defendants assert that “Any comment or evidence offered before the jury about Plaintiff being denied unemployment benefits would be irrelevant to any claim pled or issue raised in this case and any probative value in such evidence would be outweighed by prejudice to Defendants.”

While Defendants correctly assert that the decision whether to pay unemployment benefits is made by the Missouri Division of Employment Security, such a decision must have been based at least in part on Defendants’ protest of a claim and/or on the MDES Deputy’s investigation of a claim. Any statement made by Defendants during this process

regarding the reason for Plaintiff's discharge is relevant to the issue of pretext in this case.

Overtime Pay. Plaintiff concedes that there is no claim in this case that Defendants failed to pay overtime benefits or that she is entitled to overtime pay, and that, as such, references thereto are inappropriate. At the same time, Plaintiff anticipates adducing evidence of occasions on which she has worked long or unusual hours, and that in common parlance, such may be referred to as "working overtime", "doing overtime", or the like. Such references are not inappropriate in this case to the extent that they do not assert that Plaintiff was entitled to overtime pay or that the Defendants owed or owe her compensation for such.

Accordingly, for the reasons set out above, Plaintiff respectfully requests that any Orders in Limine entered in response to Defendants' Motion herein be limited in accordance with this memorandum.

Respectfully submitted,

KRUSE & O'HANLON, L.L.C.

/s/ Edward C. Kruse

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A copy of the foregoing document has been sent the via the electronic court system of the United States Federal Court this 19th day of February, 2014 to:

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